

California Regional Water Quality Control Board
North Coast Region

TIME SCHEDULE ORDER NO. R1-2000-55

For

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

U.S. DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
SHASTA-TRINITY NATIONAL FORESTS

DARK CANYON CREEK
EAST FORK OF THE SOUTH FORK TRINITY RIVER

Trinity County

WHEREAS, the California Regional Water Quality Control Board, North Coast Region (hereinafter, the Regional Water Board), finds that:

- 1) On December 22, 1999, the Regional Water Board issued Cleanup and Abatement Order No. 99-77 (CAO). This CAO required the U.S. Forest Service (hereinafter, the USFS) to cleanup and abate the discharge of earthen material from the Dark Canyon Creek culvert replacement project into Dark Canyon Creek and East Fork of the South Fork Trinity River. The CAO required the USFS to submit a workplan for cleanup and abatement activities to the Regional Water Board by January 14, 2000, and required that immediate cleanup and abatement activities be completed by January 22, 2000.
- 2) This road culvert replacement project commenced in July 1999. It is located on the Wild Mad Road in Section 26, T28N, R11W, HB&M. The project will upgrade an existing 7-foot diameter metal pipe culvert to a 20-foot diameter, 120-foot long, bottomless arch metal culvert. This involves the removal and subsequent replacement of approximately 15,000 cubic yards of earthen fill material for the road crossing. The project was not completed by winter, and the site was not adequately winterized to prevent large-scale erosion of earthen material into Dark Canyon Creek and East Fork of the South Fork Trinity River. This included stockpiling 15,000 cubic yards of earthen material on steep slopes with direct access to the Trinity River.

- 3) On January 14, 2000, at the request of the USFS, the Regional Water Board amended the CAO to extend the required workplan submittal and cleanup compliance dates. The workplan submittal deadline was amended to be February 1, 2000 and the immediate cleanup and abatement activities completion deadline was amended to be February 8, 2000.
- 4) On March 15, 2000, the Regional Water Board issued Time Schedule Order No. R1-2000-21 (First TSO). The First TSO was issued because of USFS' violations of the CAO, as amended. These violations were described in the First TSO as follows:

"The following sections of amended CAO No. 99-77 were violated:

1. Clean up and abate the effects of waste earthen materials discharges to Dark Canyon Creek and East Fork of the South Fork Trinity River.
2. Clean up and abate the effects of waste earthen materials deposited where they probably will be discharged to Dark Canyon Creek and the East Fork of the South Fork Trinity River.
3. On or before February 1, 2000, submit to the Executive Officer for concurrence a workplan, prepared by a California registered professional engineer or geologist, for cleanup and abatement as specified in provisions 1 and 2 above. The workplan shall also include a comprehensive time schedule for implementation of immediate and long-term cleanup and abatement activities. Immediate cleanup and abatement activities shall be completed by February 8, 2000, and long term abatement activities shall be completed in accordance with the proposed time schedule. The workplan shall also include an emergency contingency plan for cleanup and control of discharges to downstream waters should the stock piled fill material fail downslope and discharge into waters of the State prior to its cleanup and abatement.
4. The workplan shall also specify a site inspection schedule, and a water quality monitoring plan by the discharger. The site inspection schedule shall be of sufficient timing, at least monthly, or weekly during periods of thaw and high runoff, through the winter and spring period to ensure timely action should additional water quality problems result from winter runoff. The water quality monitoring plan shall include, but not be limited to, stream channel habitat typing surveys, channel cross sections, stream bed gravel composition analyses, pool size and depths, and sediment related water column analyses. Reference channel cross sections and pool depths, immediately above and below the construction site, shall be conducted prior to February 8, 2000, given safe weather conditions.

The remaining monitoring shall begin when stream conditions allow, and continue until the construction project is successfully completed.

5. The cleanup and abatement activities specified above shall be supervised on the ground by the licensed or certified professional who prepared the plan.”

- 5) USFS violated the following sections of the Water Quality Control Plan for the North Coast Region (Basin Plan) in discharging earthen material into Dark Canyon Creek and East Fork of the South Fork Trinity River:

Section 4. IMPLEMENTATION PLANS

ACTION PLAN FOR LOGGING, CONSTRUCTION, AND ASSOCIATED ACTIVITIES DISCHARGE PROHIBITIONS:

1. “The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
 2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”
- 6) On or about May 11, 2000, and on May 18, 2000, there occurred discharges of earthen material to Dark Canyon Creek and East Fork of the South Fork Trinity River as a result of the USFS Dark Canyon Creek project. These discharges were in violation of Provision No. 1 of the CAO.
 - 7) On or about May 11, 2000, the hillslope above the East Fork of the South Fork Trinity River was destabilized as a result of the USFS project, resulting in a significant threat of further discharges of earthen material to East Fork of the South Fork Trinity River. This is in violation of Provision No. 2 of the CAO No. 99-77. Accordingly, additional erosion control and hill slope stabilization measures are necessary. The additional measures (hereinafter referred to as the Phase II Work) will necessitate use of heavy equipment in the stream channel and temporary diversion of East Fork of the South Fork Trinity River.

- 8) Under CWC Section 13308, where the Regional Water Board determines there is a threatened or continuing violation of any cleanup and abatement order, the Regional Water Board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule. Section 13308 further provides that the amount of the civil penalty shall be based on the amount reasonably necessary to achieve compliance, not to include any amount intended to punish or redress previous violations and not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
- 9) Based the USFS' repeated violations of the CAO, as amended, and the continued waste discharges and threatened discharges, this Time Schedule Order pursuant to CWC Section 13308 is necessary.
- 10) The USFS has jurisdiction over this construction project and over the land on which this project is constructed, and is engaged in an activity that is resulting, or may result, in the discharge or runoff of pollutants. Therefore, pursuant to Clean Water Act section 313(a) (at 33 U.S.C. section 1323(a)), USFS is subject to this Time Schedule Order, including the sanctions prescribed herein.
- 11) The adoption of this Time Schedule Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to Title 14, California Code of Regulations, sections 15308 and 15321(a)(2).

THEREFORE, IT IS HEREBY ORDERED that the USFS shall comply with, and be subject to, the following:

- A. An acceptable workplan shall be submitted at least 7 days prior to the start of Phase II Work to the Regional Water Board Executive Officer for approval. To be acceptable for approval by the Executive Officer, the workplan shall include plans and a time schedule to adequately mitigate violations of CAO, as amended, and include a schedule with completion of final erosion control measures no later than October 15, 2000. The civil penalty for not submitting an adequate workplan by at least 7 days prior to the start of Phase II Work shall be \$10,000. The penalty assessment date shall be the date immediately following the date in which the required workplan was due.

The civil penalty for not completing the final erosion control measures by October 15, 2000 shall be \$10,000 per day. The penalty assessment date(s) shall commence October 16, 2000.

- B. The USFS shall immediately cleanup and abate all waste discharges to Dark Canyon Creek and the East Fork of the South Fork Trinity River. Commencing two (2) days following the date of this Order, the civil penalty for waste discharges to receiving waters shall be \$2,000 per cubic yard (approximately \$10 per gallon) of earthen material, to a maximum of \$10,000 per day.
- C. On Monday, Wednesday, and Friday of each week during the Phase II project construction period, the USFS shall maintain a true and accurate written log that details whether any discharge has occurred, and if so, the volume amount of the discharge. The USFS shall report by telephone and in writing on Monday of each week the contents of the previous week's log. The penalty for not submitting the weekly report shall be \$1,000 per day. On those days when a discharge occurs, or on those days when there has been at least 0.5 inches of rain recorded at the USFS Harrison Gulch Ranger Station, the USFS shall also report by telephone no later than the following day to the Regional Water Board. The civil penalty for not reporting under this daily schedule shall be \$1,000 per day. The penalty assessment date shall be the date immediately following the date of violation of this reporting schedule.
- D. If there are violations beyond the dates specified above, the discharger is liable for \$1000 for each additional day in which the violation occurs. In no event will the discharger be liable for more than \$10,000 per violation per day .

Ordered by _____

Lee A. Michlin
Executive Officer

August 3, 2000

(TSOusfs)